IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8751 OF 2004

Principal, Mahatma Gandhi
Mission's college of
Engineering & technology .... Petitioner

versus

Grievance Committee and ors..... Respondent.

Mrs. Jyoti Pawar for the petitioner
Mr. Rui Rodriques for the Respondent no.2.
Mr. a.A. Garge for respondent no.3.

CORAM; A.P. DESHPANDE, J.
DATED; 12TH APRIL, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petition has been filed by the Principal of Mahatma Gandhi Mission's College of Engineering and Technology taking exception to the order passed by the University dated 17-9-2003 granting the pay scale to the respondent no.3 and issuing directions in regard to the payment of arrears.

3. Few facts that are relevant for adjudicating the dispute in this petition are narrated hereinbelow.

The respondent no.3 came to be appointed as Laboratory Assistant in the year 1992 in the employment of the petitioner. A controversy cropt up as to whether the respondent no.3 herein possessed requisite qualification and training for the post of laboratory assistant. The matter thereafter landed before the college tribunal after termination of the service of respondent no.3. The tribunal on being satisfied that the respondent no.3 herein was not eligible for being appointed as laboratory assistant, dismissed his appeal calling in question the legality and validity of the order of termination passed by the petitioner.

4. Aggrieved by the said order of rejection of appeal filed by the respondent no.3, the third respondent filed writ petition in this court bearing No.2826 of 1996. Taking into consideration the length of service rendered by the employee, this court passed a consent order thereby directing reinstatement of the present respondent no.3 but in the post of laboratory attendant instead of laboratory assistant and directed payment of salary as is admissible to the post of laboratory attendant. A further direction was given to treat the service of the present respondent no.3 as continuous from the initial date of appointment. The

order itself makes it clear that the order was passed on humanitarian ground by consent of parties. After the disposal of the writ petition by order dated 1-12-1999 the employee was granted reinstatement and his pay was fixed in the scale of 750-12-870-EB-14-940. Not being satisfied with the grant of said pay scale, the employee approached this court by filing the writ petition bearing No.1039 of 2001, the respondent no.3 herein, claiming an appropriate pay scale on account of revision of pay scale by 5th Pay Commission. This court instead of adjudicating the grievance, directed the respondent no.3 herein to approach the Grievance Committee under section 57 of the University Act. There was a categorical order passed by this court that the employee shall make a written representation to the Grievance Committee of the University regarding his grievance within a period of two weeks and the grievance committee was directed to consider the grievance after giving opportunities to the rival parties within a stipulated period. It was also clarified in the order that the institution shall pay the pay scale as determined by the grievance committee.

5. Thereafter the present respondent no.3 made a representation to the grievance committee on

2-8-2001/7-12-2001. It appears from the affidavit filed by the University on record that the grievance committee did not have copy of the order passed by this court dated 29-6-2001. On an incorrect assumption that the High Court has dismissed the writ petition filed by the present respondent no.3, the grievance committee passed a resolution and proceeded to resolve thus:

> "Resolved to recommend to the Management Council that Shri Panchal had filed Writ Petition in the High Court and the same has been rejected by the Court as per the court's order the case of Shri Panchal be rejected."

It is obvious from the communication dated 15-4-2002 from the Registrar of the University addressed to the present respondent no.3 that on an incorrect assumption that the writ petition claiming the same relief as was claimed in the grievance before the Grievance Committee it was resolved to reject the representation/grievance made by the respondent no.3. On receipt of the said communication by the respondent no.3 went back to the university to bring it to its notice that the High Court had not rejected the writ petition, on the contrary the matter was remanded back to the greivance committee directing the committee to

decide the grievance after affording an opportunity to the rival parties of being heard in the matter. On realising this mistake, the grievance committee proceeded to reconsider the representation/greivance made by the respondent no.3 and took a decision to recommend to the Management Council grant of a scale together with benefits admissible to the employee under recommendation of the 5th Pay Commission. The management council accepting the recommendations of the grievance committee granted the said benefits to the respondent no.3 herein. The decision of the grievance committee and the management council is communicated to the present petititioner and it is this decision of the university which is impugned in the present writ petition.

6. In the above fact situation it is contended by the learned counsel for the petitioner that the Greivance Committee has no power to review its decision as power of Review is creature of statute and there is no power of review with the Greivance Committee.

7. From the facts narrated hereinabove, it is crystal clear that the first decision taken by the grievance committee on 15-4-2002 was based on incorrect assumption that the writ petition claiming the same relief has been dismissed by the High Court and hence

it was resolved by the grievance committee to reject the representation, when as a matter of fact High Court itself has directed the employee to move the grievance committee. Thus the first decision cannot be termed as a decision in the eyes of law, as the same proceeds on an incorrect factual premise.

8. So far as the second decision reached by the university contained in communication dated 17-9-2003 is concerned, the same yet again is bad in law for the reason that the decision taken by the grievance committee, which has been accepted by the management council, is in breach of principles of natural justice and without affording proper opportunity to the petitioner of being heard in the manner.

9. In the above set of facts, all the parties arein agreement that ends of justice would be met by remanding the matter to the grievance committee for fresh hearing and adjudication of issue in dispute. The parties are present and on instructions from the respective parties, the counsel make a statement that the parties are also agreeable and extent their consent to quash and set aside the decision taken by the grievance committee.

10. In the result, by consent the impugned decision

of the grievance committee and the management council communicated by letter dated 17-9-2003 stands quashed and set aside. The grievance committee shall denovo consider the representation made by respondent no.3 and after hearing the employee so also the present petitioner, take a decision in accordance with law. It shall be open for the parties to place on record of the grievance committee the relevant resolutions and material available with them. The grievance committee shall proceed to decide the representation of the respondent no.3 within eight weeks from today. Needless to mention that all contentions raised by the parties are left open to be raised before the grievance committee. Rule made absolute in above terms.

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